IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.305 OF 2007

M/s.Bharat Petroleum Corporation Ltd. ...Petitioners

vs.

Mrs.Goolistan Peter Coelho & others ...Respondents

Mr.A.Y.Sakhare,Sr.Counsel with Mr.S.R.Page for the Appellant.
Mr.Abhay Abhyankar Sr.Counsel with Ms Hemlata Jain and
Ms Sarita Sadananda i/b M/s.Hariani & Co. for Res. Nos.1 to 3.
Mr.De-vitre, Sr.Counsel for Respondent No.4.

CORAM: A.S.OKA, J.
DATE : JUNE 26,2007.

P.C.:

1. I have heard the learned senior Counsel for the Applicant and the learned senior Counsel appearing on behalf of the first to third Respondents. The challenge in this revision Application is to the decree of eviction passed by the Court of Small Causes against the Applicant which is confirmed in Appeal by the Appeal Bench of the Court of Small Causes.

2. With a view to appreciate the submissions made by the learned Counsel for the parties, it will be necessary to refer to the facts of the case in brief. The property subject matter of the suit is the land bearing survey No.25 Hissa No.1 corresponding the city survey No.967 admeasuring 2247 sq. meter as well as the land bearing survey No.71(part) equivalent C.T.S.No.962/1 situated at Juhu, Taluka Andheri,

Mumbai together with building know as Trombay House consisting ground and two upper floors having total built up area of 579.92 sq. meters. It is not in dispute that one Gasper was the owner and landlord of the suit property. By an indenture of lease dated 15th June 1953 executed by the said Gasper, the suit property was given on lease in favour of the Burmah Shell Oil Storage and Distributing Company of India Ltd. for a period of 20 years commencing from 1st May 1953 at the monthly rent of Rs.3087/-. According to the case made out by the Respondents-original Plaintiffs, on expiry of period of 20 years, the said Gasper renewed the lease for a further period of three years commencing from 1st May 1973. On coming into force of the Burmah Shell (Acquisition of Undertaking in India) Act,1976, the Government of India acquired the right, title and interest of the original lessee in relation to its undertakings in India. Thus, from 24th January 1976, the leasehold right of the original lessee vested in Government of India. On the same day the Government of India issued a notification under section 7 of the said Act of 1976 directing that the right, title and interest of the said original lessee shall vest in Burmah Shell Refineries Ltd, a Government Company. On 12th February 1976, the name of Burmah Shell Refineries Ltd. was changed to Bharat Refineries Ltd. On 1st August 1977, the name of Bharat Refineries Ltd was changed to Bharat Petroleum Corporation Ltd (Applicant).

3. The said Gasper died on 7th April 1983. The said Gasper had made his last will dated 22nd December 1970 by which he bequeathed his property in favour of his son Peter Gasper. A probate was obtained in respect of the said will. The said Peter gifted 50% of the suit property in favour of Coelho Associates, a private trust by a registered gift deed dated 30th March 1988. The said Peter Gasper died on 3rd June 2002. He has made his last will on 3rd December 1999 by which he bequeathed his remaining 50% share in the suit property in favour of the first respondent herein. The said will has already been probated. The second and third Respondents herein are the trustees of a private trust, Coelho Associates.

4. According to the case of the respondents, on coming into force of the Maharashtra Rent Control Act,1999 (hereinafter referred to as the said Act of 1999), the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 were repealed. In view of section 3(1) (b) of the said Act of 1999, the Revision Applicant ceased to have a protection of rent control legislation. By a notice dated 23rd April 2001, the Respondent terminated the monthly tenancy of the Applicant in respect of the suit property. A suit for possession was filed by the respondent on the basis of the said notice.

5. By way of written statement, various contentions were

raised. The first contention was that the gift deed made by the said Peter Gasper in respect of his 50% share was invalid and illegal. It is contended that the gift deed made by the said Peter relates to only a land bearing survey No.25 Hissa No.1 and hence the Respondent Nos.2 and 3 have no interest or title in respect of the land bearing survey No.78/B.

6. The second contention was that the said Gasper was a lessee of the State Government in respect of the land survey No.78/B. It is contended that the lease was for a period of 50 years from 1st May 1947 ending with 30th April 1977. It is contended that the lease has been forfeited by the Collector of Bombay. It was therefore, submitted that the suit was not maintainable. It is contended that a part of the land bearing survey No.25 Hissa No.1 has been acquired by the Municipal Corporation of Greater Mumbai for road widening. It is contended that the notice of termination of tenancy is illegal. It is submitted that the notice of termination of tenancy being illegal, the suit on the basis of the said notice was not maintainable. The trial court passed a decree which has been confirmed in Appeal.

7. The learned senior Counsel for the revision Applicant submitted that the gift deed made by the said peter was illegal and therefore, the second and third Respondents were not the landlords. He submitted that a part of the suit

property was acquired by the said Gasper from the Government under a lease which expired in the year 1997 and that portion of the land has been now allotted to the revision applicant. It is submitted that the Revision Applicant had an option to purchase the suit property when the first to third Respondents decided to sell the same. It is submitted that the suit was not maintainable as the property has been sold by the first to third Respondents in favour of the fourth respondent. He submitted that the courts below have not considered and appreciated the evidence on record.

8. I have considered the submissions. It must be stated here that apart from the wills executed by the deceased Gasper and deceased Peter, it must be borne in mind that the said Peter was the son of the deceased Gasper. The first Respondent (original first plaintiff) is the widow of the the said Peter) Even assuming that the wills and gift executed by the said Gasper and said Peter are not legal and valid, the fact remains that the first Respondent is a legal representative of the said Gasper. Both the wills have been admittedly probated. Therefore, even assuming that the wills were not established or the creation of trust was illegal, the suit filed by the first Respondent was always maintainable.

9. In so far as the contention raised regarding alleged allotment made by the State Government of a part of the suit

property in favour of the applicant is concerned, there is no pleading to that effect in the trial court and no document has been produced to show that such allotment was made by the State Government. In absence of any such pleading and material on record, it cannot be accepted that there was an allotment of a part of the property by the State Government in favour of the Applicant.

10. There is no dispute that the protection of the said Act of 1999 is not available to the Applicant. There is no dispute regarding termination of tenancy made by the Applicant by sending a notice. There is nothing on record to establish the right of the Applicant to purchase the property. Considering the concurrent findings of fact recorded by both the courts below, no case is made out for interference with the impugned order. It is not in dispute that the Applicant is not entitled to protection under the rent control legislation i.e. the said Act of 1999. There is no merit in the revision Application and the same is rejected with no order as to costs.

11. On the prayer made by the learned Counsel for the Revision Applicant, decree for possession shall not be executed till 30th September 2007. It is obvious that till 30th September 2007, parties will be covered by order dated 30th August 2006 passed in Writ Petition No.5768 of 2006 as

regards payment of amount.

JUDGE